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Date: AUGUST 3, 2005

To: EXAMINER DUC MINH NGUYEN  
U.S. PATENT AND TRADEMARK OFFICE

Fax #: (571) 273-8300

From: FRANK C. NICHOLAS  
Phone #: (847) 424-2521

Client/Matter No.: 7780/18 (T00349)

# of Pages: 6

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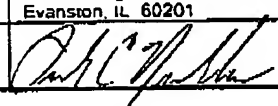
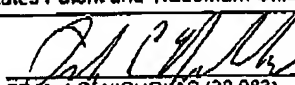
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<h1>TRANSMITTAL FORM</h1> <p>(to be used for all correspondence after initial filing)</p>	Attorney Docket No	7780/18 (T00349)
	Application Number	10/040,288
	Filing Date	OCTOBER 25, 2001
	First Named Inventor	ROBERT J. MENENDEZ
	Group Art Unit	2843
	Examiner	NGUYEN, DUC MINH

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Amendment <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s)  <input type="checkbox"/> Status Letter  <input type="checkbox"/> Extension of Time Request (duplex) <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Supplemental Information Disclosure Statement, PTO-1449, etc. <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application	<input type="checkbox"/> Assignment Papers <input type="checkbox"/> Drawings <input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Petition Raising Slip (PTO/SB/69) and Accompanying Petition <input type="checkbox"/> To Convert a Provisional Application <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Small Entity Statement <input type="checkbox"/> Request of Refund	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences  <input checked="" type="checkbox"/> Reply Brief  <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Post Card Receipt <input type="checkbox"/> Additional Enclosure(s) (please identify below).  <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
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First Presentation of Multiple Dep. Claim					+ \$180=	---	+ \$360=	
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Firm or Individual name	FRANK C. NICHOLAS Registration No. 33,983 CARDINAL LAW GROUP 1603 Orrington Avenue, Suite 2000 Evanston, IL 60201		
Signature		Date	August 3, 2005
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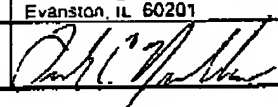
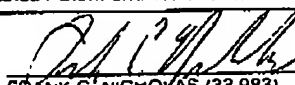
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	Application Number	10/040,288
	Filing Date	OCTOBER 25, 2001
	First Named Inventor	ROBERT J. MENENDEZ
	Group Art Unit	2643
	Examiner	NGUYEN, DUC MINH

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First Presentation of Multiple Dep. Claim					+ \$180=				+ \$360=	
					total add'l fee				total add'l fee	
					\$ 0				\$ 0	

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FRANK C. NICHOLAS (11983)  
(Typed or printed name of person signing certificate)

  
Signature

August 3, 2005  
Date

**PATENT-APPEAL**  
Case No. 7780/18 (T00349)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re patent application of:	)	
	)	
ROBERT J. MENENDEZ	)	Examiner: NGUYEN, DUC MINH
	)	
Serial No.: 10/040,288	)	
	)	Group Art Unit: 2643
Filed: OCTOBER 25, 2001	)	
	)	
Title: SYSTEM FOR MONITORING	)	
A SERVICE VEHICLE	)	

**REPLY BRIEF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22202-1450

Sir,

This is a reply brief in response to the Examiner's June 3, 2005 answer on appeal.

August 3, 2005  
Case No.: 7780/18 (T00349)  
Serial No.: 10/040,288  
Filed: October 25, 2001  
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The Examiner's answer fails to address the flaw in his arguments. Indeed, although the Examiner appears to be arguing new grounds of rejection, no new rejections are asserted.

"In order to carry back the 35 U.S.C. 102(e) critical date of the U.S. patent reference to the filing date of a parent application, the parent application must support the invention claimed as required by 35 U.S.C. 112, first paragraph. For if a parent could not theoretically have issued the day the application was filed, it is not entitled to be used against another as 'secret prior art' under 35 U.S.C. 102(e)." MPEP §2136.03 IV.

If any parent of Flick '946 could have been used as an anticipatory reference, the Examiner would have cited that reference instead. Since the Examiner cannot allege, and has not alleged, that Flick '946 could have issued on the date cited by the Examiner, Flick '946 cannot be cited as prior art in support of a §102(e) rejection.

The Examiner cites to the Flick '465 patent in his response. However, this application has never been rejected over the '465 reference. Appellant traverses the Examiner's argument that '465 "clearly" covers every limitation - if it was so clear, the Examiner would have cited '465 in support of a rejection. The '465 patent was *issued prior* to the '946 reference, and was available to the Examiner during his search and throughout the prosecution of this application. The Examiner did not even mention '465 as relevant to patentability in the Form 892.

The Examiner has continued to reject this application over Flick '946. Therefore, this rejection must fall. Furthermore, the Examiner is only allowed to raise a new ground of rejection in response to a new argument asserted by Appellant - since Appellant has not raised a new ground of rejection on appeal, the Examiner cannot assert a new ground of rejection in the Answer. *See*, 69 F.R. 155, 49963 (August 12, 2004).

Therefore, Flick '946 cannot support a rejection under §102(e).

August 3, 2005  
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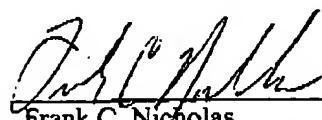
**SUMMARY**

The final rejection of claims 1-31 should be reversed.

Dated: August 3, 2005

Respectfully submitted,  
ROBERT J. MENENDEZ

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